

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS DIVISION**

CATHERINE ALEXANDER,

Plaintiff,

-vs-

TAKE-TWO INTERACTIVE SOFTWARE, INC.,
2K GAMES, INC.; 2K SPORTS, INC.; WORLD
WRESTLING ENTERTAINMENT, INC.;
VISUAL CONCEPTS ENTERTAINMENT;
YUKE'S CO., LTD.; AND YUKE'S LA INC.,

Defendants.

Case No. 3:18-cv-966-SMY

**DEFENDANTS' OBJECTIONS AND RESPONSES TO
PLAINTIFF'S RULE 26(a)(3) PRETRIAL DISCLOSURES**

Take-Two Interactive Software, Inc., 2K Games, Inc., 2K Sports, Inc., Visual Concepts Entertainment, and World Wrestling Entertainment, Inc. (collectively, "Defendants"), by counsel, and in accordance with Federal Rule of Civil Procedure 26(a)(3) submit the following objections and responses to Plaintiff's Pretrial Disclosures (Dkt. 224) ("Pl.'s 26(a)(3) Discl.").

I. LIVE TESTIFYING WITNESSES

Defendants object to Plaintiff's Witness No. 7—namely "[a]ny witness, employee, officer or representative of any Defendant who is present in the courtroom at any point during trial," Pl.'s 26(a)(3) Discl., Ex. B, at 1—as Rule 26(a)(3)(i) required Plaintiff to identify her witnesses by name. Accordingly, the Court should strike Plaintiff's Witness No. 7. *See* Fed. R. Civ. P. 37(c)(1); *see also Watts v. 84 Lumber Co.*, No. 14 Civ. 327, 2016 WL 7732935, at *1 (S.D. Ill. Feb. 12, 2016) (striking un-named witnesses from party's Rule 26(a)(3) disclosures).

In addition to the foregoing objection, Plaintiff did not list such witnesses in the parties' Final Pretrial Order submission. **Ex. 1.** Thus, Plaintiff has waived such unknown witnesses. *See Mankey v. Bennett*, 38 F.3d 353, 358–59 (7th Cir. 1994) (upholding exclusion of witness not listed in pretrial order).

II. TESTIMONY THROUGH DEPOSITION DESIGNATION

In response to Plaintiff's September 18, 2020 deposition designations, Pl.'s 26(a)(3) Disc'l., Ex. A, Defendants submit **Exhibit 2** hereto indicating their objections to Plaintiff's designations of testimony. Defendants also identify counter-designations to Plaintiff's designations, as identified in **Exhibit 3**. Defendants' objections to exhibits as indicated in Section III, below, also apply to any corresponding deposition exhibits designated by Plaintiff, as well as any designated testimony referring to or relating to such exhibits. Defendants reserve the right to play any of their counter-designations in response to any designated testimony played by Plaintiff at trial.

III. EXHIBITS

Defendants object to Plaintiff's September 18, 2020, initial exhibit list (Dkt. 221) as indicated in **Exhibit 4** hereto. Defendants also identify the exhibits listed in **Exhibit 5** hereto as rebuttal exhibits in response to Plaintiff's exhibit list.

Defendants reserve the right to use discovery answers, pleadings, any other documents exchanged in discovery, and any and all exhibits designated by Plaintiff if the need arises. Defendants reserve the right to use any materials brought to Court by any witness.

Defendants further reserve the right to utilize demonstrative exhibits, including without limitation illustrations, summaries, charts, models, computer animations, PowerPoint presentations, videos, and enlargements of portions of exhibits.

Defendants preserve all objections to any and all exhibits identified and/or offered by Plaintiff. Defendants specifically preserve the right to object to the introduction of any exhibit for lack of personal knowledge by the sponsoring witness and/or failure to lay appropriate foundation for the exhibit to be introduced. Defendants are unaware at this time of any additional exhibits that they may offer, but reserve the right to present rebuttal or impeachment evidence as necessary.

Dated: October 16, 2020

Respectfully submitted,

/s/ Dale M. Cendali

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CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2020, I electronically filed the foregoing DEFENDANTS' OBJECTIONS TO PLAINTIFF'S RULE 26(a)(3) PRETRIAL DISCLOSURES with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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